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intention to the plaintiff or his agent, then the defendant is held to have waived his right to demand the three-months notice as required by law."

We are of opinion, for reasons already sufficiently stated, that instruction No. 1. should have been given as asked for by defendant, and that the facts of the case do not warrant the amendment thereto, or the instruction given by the court of its own motion.

Upon the whole case, we are of opinion that the judgment of the hustings court must be reversed. *Reversed.*

RADFORD WEST END LAND CO. v. COWAN*

Supreme Court of Appeals: At Wytheville.

June 18, 1903.

1. **INSOLVENT CORPORATIONS**—*Winding up under Acts 1901, page 326*—*Case in judgment.* Under Acts 1901, page 326, providing for winding up abandoned insolvent and unprofitable corporations at the suit of stockholders, a court of equity has no jurisdiction to wind up a land and improvement company, at the instance of a stockholder, where it appears that the company owes no debts, its expenses are not in excess of its income, it is not wasting its assets, its management has not been abandoned by its officers or directors, its affairs are not grossly mismanaged, and it still owns a part of the real estate originally purchased by it and is ready and willing to sell the same to purchasers, and the evidence is conflicting as to the future of the company, but leaves a reasonable expectation that existing conditions will prove.

Appeal from a decree of the Circuit Court of Montgomery county, pronounced November 20, 1902, in a suit in chancery, wherein the appellee was the complainant, and the appellant and others were the defendants. *Reversed.*

The opinion states the case.

W. B. Kegley and Charles L. McKeehan, for the appellant.

Archer A. Phlegar and Thompkins & Thompkins, for the appellees.

KEITH, P., delivered the opinion of the court.

The bill in this case was filed by John T. Cowan to have the Radford West End Land Company dissolved, and its assets dis-

* Reported by M. P. Burks, State Reporter.

tributed. The statute (Acts Ex. Sess. 1901, p. 326, c. 298) under which the court took jurisdiction is as follows:

"Be it enacted by the General Assembly of Virginia, that whenever the principal purpose for which a mining or manufacturing company or a land and improvement company or a mercantile or commercial company incorporated in this state has failed, or the management of the company has been abandoned by its officers or board of directors, or the company has become insolvent, or its assets are being consumed in expenses, without benefit or probable benefit to the stockholders, or its affairs are being grossly mismanaged, it shall be lawful for any court having chancery jurisdiction to wind up such company and make such disposition of its assets as may be just and equitable in a suit brought by a stockholder or stockholders holding at least one-tenth of the capital stock of the company."

It appears that the corporation was chartered in 1890 with a minimum capital stock of \$85,000, and a maximum capital stock of \$500,000, to be divided into shares of \$100 each; that it purchased a tract of 300 acres of land now within the limits of the city of Radford, and its object was to subdivide this land into lots and to sell them at a profit. Eight hundred and fifty shares of stock were issued, of which number 100 shares fully paid and nonassessable, were issued to the plaintiff, and the remaining 750 shares to various other persons.

It appears that it owes no debts, that its expenses are not greater than its income, that it is not wasting its assets, that its management has not been abandoned by its officers or board of directors, and that its affairs are, under the circumstances, not grossly mismanaged. As to the future of the corporation, the evidence is conflicting. Some witnesses express the hope, and give their reasons for the opinion they entertain, that there will be a great improvement in the value of the land retained by the company, and that, with prudent management, the stockholders may reasonably expect to be reimbursed a considerable portion of the assessments which they have been required to pay. We cannot say that the purpose for which the corporation was organized has failed. It still owns land, which it is ready to sell whenever a purchaser can be found, and the proof is that the demand for small lots or parcels of land in that locality has increased. It still preserves its organization. We cannot say that it is insolvent, for it owes no debts; nor that its assets are being consumed in expenses, for its expenses are within its income; and the facts enumerated are sufficient to repel the charge of gross mismanagement. Whether it will be for the benefit of its

stockholders that the company should continue in business is, of course uncertain; but, as we have seen, upon that point the evidence leaves the stockholders a reasonable expectation that present conditions will improve.

Under all the circumstances of the case, we are of opinion that the appellee does not bring himself within the terms of the act of assembly providing for winding up abandoned, insolvent, or unprofitable corporations at the suit of stockholders; and, without passing upon any other question raised in the record, the decree of the Circuit Court, for the reasons stated, must be reversed, and this court will make such decree as the Circuit Court ought to have rendered.

Reversed.

DARDEN, PILOT v. THOMPSON, MASTER OF SCHOONER "WILLIAM NEELY."*

Supreme Court of Appeals: At Wytheville.

June 18, 1903.

1. PILOT LAWS—*Discriminations—Code, secs. 1965 and 1969—Revised Statutes U. S., sec. 4237.* By the pilot laws of this State (Code, sections 1965 and 1969) all vessels, except coastwise vessels with a pilot license, inward bound from the sea to certain enumerated points in the State, and all vessels outward bound from such points to the sea are subjected to certain regulations and rates. All such vessels are subject to the same regulations, and, under the same circumstances and conditions, are required to pay the same fees. These statutes make no such discrimination as is prohibited by section 4237 of Revised Statutes of the United States.
2. PILOTAGE—*State laws—Compulsory system for sea-going vessels—Inland vessels—Discrimination—Revised statutes, section 4237.* A State may establish a compulsory system of pilotage as to vessels coming from the sea to her inland ports, or going from such ports to the sea, without establishing such a system as to vessels trading between her inland ports, or between her inland ports and the ports of another State, which can be reached without going to sea, and such discrimination is not forbidden by section 4237, Revised Statutes of the United States. Local peculiarities and necessities can be best provided for by the legislation of the States respectively, and such has been the view of the Federal government.
3. PILOTAGE—*Inland vessels—Discriminations—Revised statutes, section 4237.* Section 1990 of the Code, exempting from pilotage all vessels bound to or from any point on the Potomac river is not in conflict with section 4237 Revised Statutes of the United States prohibiting "any discrimination in rates of

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